COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING

{Chapter VIII, Rule 32(2)(b)}

Description of the Case.

CRIMINAL APPEAL No. 184 of 2007
(Old No. 1919 of 1983)

Sharat Chandra

.....Appellant

Versus

The State

.....Respondent

Sri R.S. Bisht, learned amicus curiae for the appellant
Sri Harish Pujari, learned Addl. GA for the state

Approved for reporting
~~Not approved for reporting~~

Dated:- September 24, 2007

(Dharam Veer, J.)

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

CRIMINAL APPEAL No. 184 of 2007
(Old No. 1919 of 1983)

Sharat Chandra aged 22 years S/o Laxmanacharya,
R/o Vill. Udai-Rampur, P.S. Kotdwara, Pauri Garhwal
.....Appellant

Versus

The State .....Respondent

Dated: September 24, 2007

Sri R.S. Bisht, learned amicus curiae for the appellant
Sri Harish Pujari, learned Addl. GA for the State

HON. DHARAM VEER, J.

This criminal appeal, preferred u/s 374(2) of Code of Criminal Procedure, 1973 (*hereinafter to be referred as Cr.P.C.),* is directed against the judgment and order dated 11.08.1983 passed by Sessions, Judge, Pauri Garhwal in Sessions Trial No.16 of 1982, whereby the learned Sessions Judge has convicted the appellant-Sharat Chander under Section 452 of Indian Penal Code, 1860 (*hereinafter to be referred as I.P.C.*) and sentenced him for four years R.I. and also to pay a fine of Rs. 200/- and in default of payment of fine, to undergo R.I. for six months.

2. In brief, the prosecution case is that on 11.02.1981 at about 5:30 P.M., there was a great hue & cry near the house of complainant-Anusuya Prasad on the Tiraha of Kishanpur and when the complainant came out of his house, he saw that a bus of GMOU was standing on the Tiraha and behind it a Jeep of Mission Hospital, Padampur was standing and Bharat Chandra alias Bhartu and his younger brother Sharat (appellant) were hurling abuses on the driver of aforesaid bus. There were two nurses and a driver inside the Jeep. Those nurses were weeping and were asking to save them and were also saying that these two miscreants were kidnapping them and want to commit rape with them. Shopkeepers of the crossing of the complainant's village Sardar Singh, Rajendra Prakash Dabral, Khima Singh and many other persons surrounded the aforesaid jeep. The complainant asked Bhartu & Sharat not to do like so. Then the complainant removed Bharat and Sharat (appellant) with the help of aforesaid

Shopkeepers from the aforesaid Jeep and also gave a signal to the driver of the jeep to run away. Then the driver drove away the jeep taking the aforesaid two nurses towards Padampur and the complainant returned to his house. About 6:15 p.m. when it was a little dark, Bharat Chandra alias Bhartu having a knife in his hand and Sharat (appellant) having stick in his hand entered the complainant' house and after putting knife towards the complainant told him that he was responsible for the release of the aforesaid nurses and now they would commit rape with his daughters and daughter-in-laws in his presence and also told that they will see who will stop them. The ladies of the complainant's house ascended on the roof from the back side and raised alarm to save them. Then appellant-Sharat gave two-three slaps to the complainant and Bhartu and the appellant-Sharat started to drag the complainant out from his house in order to take him away and said while abusing that he would be killed by the said knife and then they dragged him (complainant) to Tiraha where many people of the village assembled on hearing the alarm raised by the complainant. The complainant told the villagers that these miscreants were taking him with the intention to kill him. He also told them that they want to outrage the modesty of the ladies and girls of his house. He also sought help from the villagers to save him. The villagers were also aggrieved by the terror caused by these miscreants because they had outraged the modesty of a number of girls and ladies and had also committed the plundering (*Lootmar*). They were also implicated in the cases of murder and rape in the past. The villagers after seeing that these people would murder the complainant, many persons started to call them but even then these miscreants started to take complainant towards Kalaghati road. Then the villagers in order to save the life of complainant, started to beat these two miscreants with *Lathis*. Then the complainant was freed and Bhartu and appellant-Sharat fled away being injured and Bhartu fell down on the road on the other side of the hut of Purnanand and Sharat managed to escape. The dead body of

Bharat was lying on the road there. With these averments, the FIR was lodged by complainant-Anusuya Prasad Naithani on 11.2.1981 at 19:45 hours at P.S. kotdwar, Distt. Pauri Garhwal, i.e. Ex.Ka-1. On the basis of this FIR, a Chik Report was prepared by Head Moharrir Sobat Singh, that Chik FIR is Ex.Ka-2. The entry was made in the G.D., the copy of G.D. is Ex.Ka-3 The investigation of the case was entrusted to S.I. Shiv Singh Pundir. During the investigation, the I.O. inspected the place of occurrence and prepared the site plan i.e. Ex.Ka-8. A Fard was also prepared for taking the knife of Bhartu on the spot, i.e. Ex.Ka-7. After completing the investigation, the I.O. has submitted the charge sheet against present appellant u/s 364/452/342/504 IPC on 16.07.1981, i.e. Ex.Ka-9 in the court of CJM, Pauri Garhwal.

3. Learned Chief Judicial Magistrate, Pauri Garhwal has committed the case to the court of Sessions on 09.06.1982 under section 209 Cr.P.C. after complying with the provisions of Section 207 Cr.P.C.

4. On 19.07.1982, the learned Sessions Judge, Pauri Garhwal has framed the charge against the appellant u/s 364/452/342 of IPC. The charge was read over and explained to the appellant who pleaded not guilty and claimed to be tired.

5. To prove its case, the prosecution has examined P.W.1 Anusyua Prasad Naithani, complainant of the case, P.W.2 Sri Sardar Singh, eyewitness, P.W.3 Smt. Shel Bala Naithani, wife of P.W.1 Anusuya Prasad Naithani, eyewitness, P.W.4 Sri Sagar Mal, eye witness, P.W.5 constable Khushi Ram and P.W.6 S.I. Shiv Singh, I.O. of the case.

6. Thereafter, the statement of the appellant was recorded u/s 313 of Cr.P.C. who has denied the allegation made against him. He has stated that he has been implicated on account of enmity. However, he had not produced any oral or documentary evidence.

7. After appreciating the evidence on record and after hearing learned counsel for the parties, the learned Sessions Judge, Pauri Garhwal vide his judgment and order dated 11.08.1983 convicted the appellant u/s 452 IPC and sentenced him for four years R.I. and also to pay a fine of Rs. 200/- and in default of payment of fine, to undergo R.I. for six months. Against the said judgment and order dated 11.08.1983, the appellant has filed present appeal.

8. I have heard Sri R.S. Bisht, learned amicus curiae for the appellant and Sri Harish Pujari, learned Addl. G,A, for the State and perused the entire material available on record.

9. To prove its case, the prosecution has examined P.W.1 Anusuya Prasad who has stated that village Krishnapuri is distant about 12 Kms. from Kotdwar. His village is on that pucca road which goes from Kotdwar to Jhandi Chaur. There are 8-10 shops where the village bus stand is there. In February, 1981 a branch of Mission Hospital was in Jhandi Chaur and the Mission Hospital was in Padampur Sunkharon. Two nurses used to go at Branch Hospital of Jhandi Chaur from Padampur by Jeep and also used to come back in the evening. The difference of Jhandi Chaur from his village was about 2½ Kms. He has also stated that on the way from Jhandi Chaur to Padampur, his village comes in the way. From his village one way goes towards Jhandi Chaur, second one towards Kotdwar and third one goes towards Kulalghati. Appellant Sharat Chandra and his brother Bhartu were known to him and the village of Sharat Chandra is Udairampur which is about 2 Kms. from his village. On 11.2.1981 at about 5:00 P.M., he was in his house and after hearing hue and cry on the bus stop, he reached there, He saw appellant Sharat Chandra and his brother Bharat Chander assaulting the driver of bus of GMOU and there was a jeep of Mission behind the aforesaid bus and the appellant and his brother were saying while beating the driver of bus that why he had not given pass to them. In the jeep, two nurses were there and a driver was also

there in the jeep and the nurses were crying for their help and they were also saying that these miscreants had kidnapped them and wanted to commit rape with them. He along with Sardar Singh, Khim Singh etc. reached near the jeep and asked them not to do like so. Then appellant and his brother came out of the jeep. The appellant was having iron rod in his hand and his brother was having a knife and then they gave a signal to the driver of the jeep to go away then the driver of the jeep drove away the jeep towards Kotdwar. Then he and other persons got busy in their work. After 15-20 minutes, appellant and his brother came towards his house and both of them dragged him inside the house and were telling to each him a lesson because he was instrumental in freeing of the nurses and they threatened to kill him and also threatened to molest and outrage the modesty of the ladies of his house. At the time of incident electric light was there. The ladies ran towards the roof of the house and raised alarm then appellant Sharat and his brother Bharat Chander dragged him out of the house and gave him slaps. When he raised an alarm, then the people of the vicinity came there and they tried to persuade them but they did not agree. Then the appellant and his brother threatened him to see that who will save them. The appellant was having an iron rod and Bhartu was having a knife-Ex.1. When the appellant wielded iron-rod *(Sariya*) on the villagers then the villagers had beaten the appellant and his brother by *lathis*. Then he got freed and he ran away to his house. After some time, some persons told him that Bhartu received injuries and was lying near the hut of Puran. When he went there he saw that Bhartu was lying dead. At that very time, he came to Kotdwar by taxi and gave written report in the police station. He has proved the written report, i.e. Ex.Ka-1. He has further stated that a knife was recovered near the dead body of Bharatu and a Fard was also prepared in which he had signed. This witness was cross-examined at length by the defence counsel but nothing has come out from his statement which

may create any doubt in his evidence. The evidence of this witness is reliable and believable.

10. P.W.2 is Sardar Singh who was declared hostile by the prosecution as he has not supported the prosecution case.

11. P.W.3 is Smt. Shail Bala Naithani who has stated that on 11.2.1981 at 6-6:30 P.M., she along with her husband Anusuya Prasad was at home. At that time Smt. Janki Devi, her sister in law (Jethani) and her daughters Punita Naithani, Anuj Naithani and Km. Naithani were also there. Electric light was also there in the house. Appellant Sharat and his brother Bharat, who were miscreants, were entered in the house. Appellant was having an iron rod and Bharat was having an open knife i.e. Ex.1 Appellant and his brother Bharat had caught her husband and they had threatened to kill him because he was instrumental in freeing the nurses. Appellant and his brother had also threatened to commit the rape of the ladies and daughters of her house. Both of the miscreants took her husband out by dragging him and the ladies of the house raised an alarm after reaching the roof of the house. About hundred of persons got assembled there and both of the miscreants dragged her husband 15-20 steps away from the house. Then the mob started to beat the appellant and his brother due to which her husband got freed from their clutches and both of the miscreants ran away. This witness was also cross-examined at length by the defence counsel but nothing has come out from her statement which may create any doubt in her evidence. The evidence of this witness is also reliable and believable.

12. P.W.4 is Sagar Mal who has stated that his teashop and his house is near the house of Anusuya Prasad Naithani and from last 15 years, he was staying there and also running the shop. Sharat Chandra and Bharat Chandra, both were the real brothers and Bharat Chandra had died and Sharat Chandra is an accused in the present case. On 11.2.1981 at about 5-5:30 P.M., he heard the noise of *Bachao-Bachao*. He

came from his house and saw that in the jeep of Mission Hospital, two nurses were there and they were crying for their help. In the jeep, appellant Sharat Chandra and deceased Bharat Chandra, both were also there. Bharat was having a knife in his hand and Sharat was having an iron-rod. Nurses were crying that they both of them wanted to outrage their modesty and in front of jeep, a bus of GMOU was standing due to which they had to stop. Except him, Anusuya Prasad Naithani, Sardar Singh, Ramsharan Dhulia and Sohanlal Dhulia were also there on the spot. Then he along with other persons tried to convince the appellant and his brother Bharat. When appellant and his brother came out from the jeep then they (complainant and others) gave a signal to the driver of the jeep to run away and then the driver ran away from there. After the jeep had gone, then appellant and his brother felt bad and both of them entered into the house Sri Naithani. The ladies of the house of Naithani reached on the roof from the back of the house and raised an alarm. When he entered in the house of Sri Naithani then he saw that appellant Sharat and his brother Bharat were bragging Sri Naithani out from the house. Appellant was having an iron rod in his hand and Bharat was having a knife. Appellant and his brother took Naithani towards *Tiraha* and Naithani was crying for help and then some other persons also came there. When the villagers called the appellant and his brother then they started to take Naithani towards *Kalalghati* by dragging. Then the villagers had beaten the miscreants by *Lathis* and sticks (Dandas). His brother Bharat was also beaten. Then appellant and his brother ran away after being injured. After that the dead body of the Bharat was found near the hut of Puran Singh. This witness was also cross-examined at length by the defence counsel but nothing has come out from his statement which may create any doubt in his evidence. The evidence of this witness is also reliable and believable.

13. P.W.5 is Khushiram C.P. 147 has stated that he was posted as Constable in February, 1981 at P.S. Kotdwar and he recognized the handwriting and signature of the then Head Moharrir Sobat Singh. He has proved the Chik FIR i.e. Ex.Ka-2 and its entry in the G.D. The entry in the G.D. was also made by Sobat Singh, the copy of G.D. is Ex.ka-3.

14. P.W.6 is S.I. Shiv Singh Pundir who has stated that on 11.2.1981 he was posted as S.I. P.S. Kotdwar and on that day, Anusuya Prasad lodged his written report Ex.Ka-1 in the police station and the investigation of the case was entrusted to him. In the police station, he has enquired from the complainant and statements Ex.Ka-4, Ex.ka-5 and Ex.Ka-6 was given to him by Sardar Singh. After that he reached on the spot and started enquiry from the witnesses. Knife Ex.1 was given to him by the complainant and the same was sealed on the spot and a FArd was prepared, i.e. Ex.Ka-7. The dead body of Bharat Chandra was also sealed and inquest report was also prepared and dead body was sent for post-mortem to Pauri. He prepared the site plan i.e. Ex.Ka-8 and he had proved the same. In March, 1981 due to illness he left the investigation and the investigation of the case was completed by S.O. J.S. Arya. The charge Ex.Ka-9 was also submitted by J.S. Arya which was written and signed by him. He has proved the same.

15. After that the statement of the appellant was recorded u/s 313 Cr.P.C. He has denied the allegations made against him and submitted that he has been falsely implicated due to enmity. However, he had not produced any oral or documentary evidence.

16. Sri R.S. Bisht, learned amicus curiae for the appellant argued that on the basis of the evidence discussed above, there is no independent eyewitness in the present case and the offence u/s 452 of IPC is not made out against the appellant. Section 452 of IPC is reproduced as under:-

> ***"452. House-tresspass after preparation for hurt, assault or wrongful restraint- Whoever commits house-tresspass, having***

made preparation for causing hurt to any person or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

17. As per the evidence discussed above, it is proved beyond reasonable doubt that the appellant along with his brother Bharat Chandra alias Bhartu had wrongfully detained two nurses in a jeep and they wanted to commit rape with them. When they reached near the Tiraha of Kishanpur, then the complainant P.W.1 Anusuya Prasad tried to release the above-said two nurses from the illegal custody of appellant and his brother Bharat Chandra. The nurses were crying for help to save themselves and they were requesting to the people that these persons wanted to take them for the purpose of committing rape with them and they were in illegal custody of these accused persons. These two girls were released from the possession of the appellant and his brother Bharat Chandra on the intervention of the complainant Anusuya Prasad-P.W.1 and the other people of the vicinity. After 15-20 minutes, appellant and his brother came towards house of complainant and both of them dragged him inside the house and were telling to teach him a lesson because he was instrumental in freeing of the nurses and they threatened to kill him and also threatened to molest and outrage the modesty of the ladies of his house. Then the ladies of the house of complainant ran towards the roof of the house and raised alarm then appellant Sharat and his brother Bharat Chander dragged the complainant out of the house and gave him 2-3 slaps. When the appellant Sharat Chandra wielded iron-rod (Sariya) on the villagers then the villagers had beaten the appellant and his brother Bharat Chandra by *Lathis*. After that the complainant got freed from the clutches of the appellant and his brother Bharat Singh. Due to the injuries caused by the villagers, Bharat Singh died on the spot and his dead body was found lying near the hut of Puran and the present appellant managed to escape from there. This fact is supported by the statement of P.W.1 Anusuya Prasad,

who is an independent witness, P.W.3 Smt. Shel Bala Naithani, who is also an independent witness and also from the statement of P.W.4 Sagar Mal who is also an independent witness and is not at all related to the complainant. Further, P.W.4 Sagar Mal is living there and he has a shop there and is a natural and reliable witness and his presence on the spot is very natural. Thus, in this way the prosecution has proved its case against the appellant u/s 452 of IPC beyond reasonable doubt that the appellant has committed house trespass of the complainant and dragged him out and then beaten him by slaps and also tried to outrage the modesty of the ladies and girls of the house of complainant. In this way, he has committed an offence punishable u/s 452 IPC which is also proved the statements of P.W.1 Anusuya Prasad, P.W.3 Smt. Shel Bala Naithani and P.W.4 Sagar Mal who are the independent witnesses. Hence, the argument advanced by learned amicus curiae that the offence u/s 452 IPC is not made out against the appellant and the witnesses are not the independent witnesses, is misconceived and cannot be accepted in the eye of law for the reasons recorded above. The trial court has not committed any error in convicting the appellant u/s 452 of IPC and I am in full agreement with the findings recorded by the trial court on the point of conviction.

18. For the reasons recorded above, the appeal is devoid of merit and is hereby dismissed. The judgment and order dated 11.8.1983 passed by Sessions Judge, Pauri Garhwal is hereby confirmed.

19. Let the record of the case be sent back to lower court concerned for compliance of the order.

(Dharam Veer, J.)

September 24, 2007

Rajeev Dang